

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/568,699 Confirmation No.: 7132
Applicant(s) : Nicolaas A. DE MUNCK *et al.*
File Date : September 29, 2006
TC/A.U. : 1796
Examiner : Liam J. HEINCER
Title : *"Improvements In Or Relating To Plasticizer"*
Atty. Docket No. : 2003M091
Customer No. : 23455 Date: April 7, 2010

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL REQUEST FOR REVIEW

Sir:

In response to Office Action December 8, 2009, Applicants respectfully submit this Pre-Appeal Request for Review along with the filing of the Notice of Appeal.

Applicants also submit herewith a **Petition to Extend Time** for a period of (1) one month from the date now set, March 8, 2010, up to and including April 8, 2010, along with the **Authorization to Pay the Requisite Fee**.

REMARKS

Applicants respectfully submit this Pre-Appeal Request for Review and reconsideration of the application.

Claims 10-12, 19, 23, and 26-28 are pending in the application and stand rejected. The pending claims were finally rejected in the Office Action dated December 8, 2009, and have been rejected at least twice.

35 USC § 103 Rejections

Applicants respectfully submit that the Office has erred in concluding that the pending claims are unpatentable in two obviousness rejections set forth below. In particular, "[t]he key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." (M.P.E.P. § 2141.) Applicants respectfully submit that a clear, explicit articulation of why the pending claims are obvious has not been provided, especially considering the great and many differences between that of the claimed invention and prior art.

In contrast, in Applicants' humble view, the prosecution only represents a piecemeal of the picking and choosing of features from the prior art of record working off the hindsight of Applicants' Specification. Applicants respectfully submit that this is not the proper application of the obviousness standard recently articulated by the Supreme Court and that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (M.P.E.P. § 2141.) Indeed, the claimed invention goes beyond predictable results, simple substitutions, using known techniques to improve similar methods in the same way, and beyond a finite number of identified, predictable solutions of solving a problem, with a reasonable expectation of success.

For example, claims 10-12, 19, 23, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ageishi et al.** (U.S. Patent No. 5,880,310) in view of **Schlosberg et al.** (U.S. Patent No. 5,798,319). Applicants respectfully disagree. Applicants have amended the claims and set forth reasons of patentability in the following papers:

See

Response of January 11, 2008, pages 2 to 4;

Response of October 24, 2008, pages 5 to 6;
Response of February 20, 2009, pages 2-6/RCE of March 10, 2009 entering the response; and
Response of November 3, 2009, pages 2-4.

Additionally, claims 10-12, 19, 23, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Godwin et al.** (U.S. Patent No. 4,543,420) in view of **Schlosberg et al.** (U.S. Patent No. 5,798,319). Applicants respectfully disagree. Applicants have amended the claims and set forth reasons of patentability in the following papers:

See

Response of October 24, 2008, pages 5 to 6;
Response of February 20, 2009, pages 2-6/RCE of March 10, 2009, entering the response; and
Response of August 18, 2009, pages 2-5.

Applicants thank the Office for its reconsideration of the application and its review of the application's prosecution.

Applicants respectfully request that all rejections be withdrawn and solicit a prompt notice of allowability. In the alternative, Applicants invite the Office to telephone the undersigned attorney if there are any other issues outstanding which have not been presented to the Office's satisfaction.

Respectfully submitted,

April 7, 2010

Date

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